

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

NATHANIEL ISH,

Petitioner,

v.

JEFFREY A UTTECHT,

Respondent.

CASE NO. C12-6084 RBL-JRC

ORDER AFFIRMING ORDER  
DENYING REQUEST FOR  
EVIDENTIARY HEARING

THIS MATTER is before the Court on Petitioner Ish's Objection/Motion for Reconsideration [Dkt. #39] of the Magistrate Judge's Order [Dkt. #38] denying his request for an evidentiary hearing on his claim that his *Miranda* waiver was not valid because he was impaired by drugs and alcohol. The Petitioner's Objection is before this Court under Rule 72(a). In order to overrule the underlying Order, this Court must determine that it was clearly erroneous or contrary to law. *See also* 28 U.S.C. §636(b)(1)(A)

The Magistrate Judge determined that Petitioner had not sought to supplement the record in the state court on this issue, and that its review of the issue under 28 U.S.C. §2254(d)(1) was limited to record that was in fact before the state court. *Cullen v Pinholster*, 131 Sct. 1388, 1398 (2011).

Ish argues that the Magistrate Judge's Order first says that he did attempt to modify the record, and then says he did not. This Court does not read the Order in that way. Ish did not attempt to modify or supplement the state court record until after his Motion for discretionary review to the Washington Supreme Court was denied. As the Magistrate Judge's Order explains, where the factual record is not supplemented in state court, this Court's ability to conduct an evidentiary hearing is quite limited. *See* 28 U.S.C. §5542(e)(2). This Court agrees that none of the enumerated exceptions applies, and that this Court's review is limited to the record that was before the State Court.

The Denial of the Motion for an evidentiary hearing was not clearly erroneous and it is not contrary to law. The Petitioner's Objection is **OVERRULED** and the Order is **AFFIRMED**. AN Order resolving the underlying §2254 Petition will follow.

IT IS SO ORDERED.

Dated this 13<sup>th</sup> day of January, 2014.

Ronald B. Lightner

RONALD B. LEIGHTON  
UNITED STATES DISTRICT JUDGE